In the High Court of Punjab and Haryana at Chandigarh

CWP No. 2622 of 1999
Date of decision: November 23, 2007

Avtar Singh

---Petitioner

Vs.

Haryana Warehousing Corporation, Panchkula

---Respondent

Coram: **HON'BLE MR. JUSTICE M.M.KUMAR**

Present: Mr.Gunjan Mehta, Advocate,
for the petitioner.

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M.M.KUMAR, J.

This petition filed under article 226 of the Constitution prays for quashing communications dated 3.10.1996 (P-6) and 1.2.1999(P-12) whereby the claim made by the petitioner for accepting his prayer for pension under the Haryana Warehousing Employees Pension Ragulations, 1996 (for brevity 'the Regulations') has been declined. The short question raised in this petition is whether the Regulations are to be effective from 27.6.1996 as provided by Regulation 2 or from the later date when these Regulations were published in the Official Gazette i.e. from 2.7.1996. The aforesaid question attains significance because the petitioner has attained the age of superannuation on 30.6.1996 and if the Regulations allowing the petitioner to switch over to pension are effective from 27.6.1996, then he could avail the benefit of pension under the Regulations otherwise if the Regulations are deemed to be effective from the date of their publication in the Official Gazette on 2.7.1996 then, the petitioner would loose the benefit

of pension admissible under the Regulations. It is appropriate to mention that in the Corporation earlier to the promulgation of the Regulations there was Provident Fund Scheme which was regulated by Haryana Warehousing Corporation Employees Provident Fund Regulations, 1971. The petitioner was admittedly a member of the aforementioned fund and has availed this benefit under the fund.

In the written statement, the only stand taken is that the Regulations have been framed under Section 42 of the Warehousing Corporation Act, 1962. Accordingly, the Regulations under Section 42 of the Warehousing Corporation Act are deemed to be effective from the date of its notification in the Official Gazette.

Mr. Gunjan Mehta, learned counsel for the petitioner has argued that once there is an express intention manifest through Regulation 2 then reading of any other date for the enforcement of these Regulations by the respondent-corporation would not be warranted. According to the learned counsel, the Regulations are deemed to have come into force with immediate effect as is evident from the perusal of Regulation 2. Learned counsel has further submitted that Section 5 of the General Clauses Act, 1897(for brevity 'the Act') also supports the aforementioned contention. According to him it provides that when an enactment does not expressed expressly provide any date of its promulgation then, it shall come into operation on the day on which it receives the assent of the President in respect of a Central Act. He has then referred to Sub-Section 3 of Section 5 of the General Clauses Act to contend that The Regulation must be construed to have come into operation immediately on the expiration of the date preceding its commencement unless contrary intention is expressed by

the Regulations themselves. Learned counsel has maintained that the intention has been expressed by Regulation 2 by the Regulation framing authority.

No one has put in appearance on behalf of the respondents.

After hearing the learned counsel for the petitioner and perusing the paper book/Regulations, I have reached the conclusion that this petition deserves to succeed. It is needless to say that any statute, Rule or Regulations which aims at liberalizing of pension or grant of pension are pieces of social welfare legislations. Such legislation or legislative instrument must be construed liberally so as to advance the object which such legislation intends to achieve. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of **Whirlpool India Limited** Vs. **ESI Corporation** 2003 SCC 185 wherein the aforementioned principle of interpretation to a social legislation Employees State Insurance Act, 1948 was applied. Similar principles were adopted by Hon'ble the Supreme Court in the case of **Bandhua Mukti Morcha Vs. Union of India** (1984) 3 SCC 161 while interpreting Inter State Migrant Workmen(Regulations of Employees and Conditions of Service)Act, 1979 and in **Kunal Singh Vs. Union of India** (2003) 4 SCC 524 while interpreting the social welfare legislation like Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Regulations in question have obviously been promulgated with the object of granting pension to the employees of the Corporation by replacing the Employees Provident fund and is thus a piece of social legislation. Firstly, it would be profitable to read Regulations 2 of the Regulations and Section

5 of the Act. Both the provisions reads thus:-

Regulation (2) of the Notification dated 27.6.1996

"These Shall come into force with immediate effect."

Section 5 of the Act

"5.**Coming into operation of enactments.-** [(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent.-

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) in the case of an Act of Parliament, of the President.]

3. Unless the contrary is expressed, a [Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."

A perusal of Regulation 2 makes it evident that the Regulations are to come into force *with immediate effect.* In other words, Regulation making authority expressed its intention that the Regulations were not to come into force from the date of their notification in the Official Gazette. Opening lines of Section 5 of the Act also makes it clear that where an act is not expressed to come into operation on a particular day then the date of operation may have to be determined by the principles stated therein. It

means if the legislature itself has expressed its intention by specifying the date of its operation then no different date could be imputed to the legislature. Therefore, I am of the considered view that the Regulations came into effect from 27.6.1996. For the aforementioned proposition, reliance could be placed on a Division Bench judgment of this Court in the case of **Kishori Lal s. State of Punjab** AIR 1958(Punjab.) 402. In that case a dispute concerning removal of an Executive Officer appointed by the Municipal Committee, Rohtak had arisen where the date of issuance of notification or its publication in the Official Gazettwe was in issue. The Division Bench ruled that Clause 36 of Section 2 of the Punjab General Clauses Act, 1898 did not require that the notification was to have effect only from the date when it was published in the Official Gazette. It was held that in Government offices the notification takes effect from the date it is issued usually some time before it can be actually printed in the Gazette. Therefore, the date of Gazette notification has not been considered to be the date when the notification is to take effect. In the present case, the date of operation of the Regulations is even more pronounced as per Regulation 2. It has been made clear beyond doubt that the Regulations were to operate with immediate effect. Accordingly, I hold that the Regulations come into force with immediate effect on 27.6.1996.

The stand of the respondent-corporation in the written statement based on Section 42 of the Warehousing Corporation Act. 1962 (for brevity 'the Corporation Act') does not require any detail examination. Section 42(1)of the Corporation Act reads as under:-

> “A Warehousing Corporation may, with the provisos sanction of the appropriate Government, by

notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act"

A perusal of the aforementioned provision no where provides that the Regulations framed under this Section are to operate from the date of publication in the Official Gazette. The only provision made is that such regulations could be made by the Corporation with the previous sanction of the appropriate Government by issuing notification in the Official Gazette. Had that been so then regulation framing authority would not have incorporated in Regulation 2 that the Regulations were to come into force with immediate effect i.e. from 27.6.1996. There is thus, no substance in the stand taken by the Corporation in the written statement and the same is accordingly rejected.

In view of the above, the writ petition succeeds. Consequently, the communications dated 3.10.1996 (P-6) and 1.2.1999(P-12) sent by the respondent-corporation are hereby quashed. A direction is issued to the respondent to release the pensionary benefits to the petitioner after adjusting the provident fund paid to the petitioner. In view of the fact that the petitioner has already availed the benefit under the Provident Fund on account of pendency of the petition, no interest would be admissible to him. These directions be carried within a period of two months from the date of receipt of a certified copy of this order.

(M.M.KUMAR)
JUDGE

NOVEMBER 23, 2007
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